MONOPOLY NOT APPLICABLE TO COMBINATIONS OF PUBLIC SERVICE COMPANIES UNDER COMMISSION CONTROL. — The New York stock corporation law provides that no stock corporation shall combine with any other corporation or person for the creation of a monopoly, or the unlawful restraint of trade, or for the prevention of competition in any necessary of life. The defendant is a holding company which controls practically the entire street railway business of the city of New York. *Held*, that it is not a combination within the prohibition of the act. *Continental Securities Co.* v. *Interborough Rapid Transit Co.*, 207 Fed. 467 (Dist. Ct., S. D. N. Y.).

The question has aroused great diversity of opinion. The lower New York courts have held that such combinations do not violate the act. *Attorney-General* v. *Consolidated Gas Co. of N. Y.*, 124 App. Div. 401, 108 N. Y. Supp. 823; *Attorney-General* v. *Interborough-Metropolitan Co.*, 125 App. Div. 804, 110 N. Y. Supp. 186. The federal courts have maintained a contrary view. *Burrows* v. *Interborough-Metropolitan Co.*, 156 Fed. 389; *Continental Securities Co.* v. *Interborough Rapid Transit Co.*, 165 Fed. 945. The state decisions argue that the statute was not intended to apply to public service companies because they are subject to legislative regulation in the interests of the public; and that, if this cannot be inferred from the act itself, it is evident from the passage of subsequent statutes placing public services under commission control. A literal construction of the sweeping language of the statute, however, would justify the view of the federal cases that all combinations which prevent competition are prohibited. In support of this construction are cases holding that restrictive combinations or agreements, although made by public service companies, are monopolistic and contrary to public policy or anti-trust legislation. *People ex rel. Peabody* v. *Chicago Gas Trust Co.*, 130 Ill. 268, 22 N. E. 798; *United States* v. *Trans-Missouri Freight Association*, 166 U. S. 290. Other decisions, however, maintain that anti-trust legislation is designed to prevent only agreements harmful to the public, and that combinations between public services are not within this description. *Yazoo & M. V. R. Co.* v. *Searles*, 85 Miss. 520, 37 So. 939; *State* v. *Central of Georgia R. Co.*, 109 Ga. 716, 35 S. E. 37. Jurisdictions which have inaugurated commission control seem to have done so believing that regulation of public service companies is preferable to competition between them. See *Weld* v. *Gas and Electric Light Commissioners*, 197 Mass. 556, 558, 84 N. E. 101, 102; *People ex rel. Edison Co.* v. *Willcox*, 207 N. Y. 86, 98, 100 N. E. 705, 708. This would indeed seem to be the better policy and to justify the courts in taking a rather liberal construction of general anti-trust statutes. *McKinley Telephone Co.* v. *Cumberland Telephone Co.*, 152 Wis. 359, 140 N. W. 38.

SALES — IMPLIED WARRANTY — TITLE — RESALE OF CONFIDENTIAL REPORTS. — R. G. Dun & Co. furnished financial reports to the plaintiff, the latter contracting not to resell. The plaintiff in breach of this agreement sold reports to the defendant, and now sues for the purchase price. Dun, after the transaction had taken place, notified the defendants of his rights, warned them to make no use of the reports, and demanded their return. *Held*, that the plaintiff may not recover. *Carbolineum Wood Preserving Co.* v. *Carter*, 50 N. Y. L. J. 361 (Municipal Court of the City of New York, Oct., 1913).

The court in the principal case gave the defendant a defense because of the plaintiff's breach of an implied warranty of title. In a sale under the New York act there is "an implied warranty that the buyer shall have and enjoy quiet possession of the goods as against any lawful claims existing at the time of the sale." N. Y. LAWS OF 1911, c. 571, § 94. If the defendant is not a *bonâ fide* purchaser for value, equity will enjoin his use of the reports obtained through the plaintiff's breach of his agreement not to resell. *Dodge Co.* v. *Construction Information Co.*, 183 Mass. 62, 66 N. E. 204; *National Tel. News*

Co. v. *Western Union Tel. Co.*, 119 Fed. 294. At common law the defendant is not a *bonâ fide* purchaser for value, as an executory promise is not such value as to cut off equities. *Brown* v. *Welch*, 18 Ill. 343; *Keyser* v. *Angle*, 40 N. J. Eq. 481, 4 Atl. 641. Under the Uniform Sales Act, value is defined as "any consideration sufficient to support a simple contract"; but this provision is omitted from the act as adopted in New York, and common-law principles, therefore, prevail in that state. As the defendant can thus make no use of the goods sold him by the plaintiff, it seems clear that the warranty was broken and he should not be forced to pay for them.

SPECIFIC PERFORMANCE — DEFENSES — INADEQUACY OF CONSIDERATION. — The defendant, through a real estate agent, agreed to convey real estate worth about $12,000 and pay in cash $15,000 in exchange for city property of the plaintiff's worth about $15,000. The defendant's agent was secretly receiving a commission on the deal from the plaintiff. *Held*, that specific performance will not be granted. *State Security & Realty Co.* v. *Shaffer*, 20 Det. L. N. 772 (Mich. Sup. Ct., Sept. 30, 1913.)

The exercise of equity's jurisdiction to compel specific performance of a contract rests upon the sound discretion of the court in view of all the circumstances. *Norris* v. *Clark*, 72 N. H. 442, 57 Atl. 334. This specific-performance jurisdiction will not be exercised where the agreement is unconscionable, even though equity would not be justified in setting aside the contract. *Cathcart* v. *Robinson*, 5 Pet. (U. S.) 264. So, where there is evidence of unfair dealing or sharp practice coupled with inadequacy of consideration in the contract, specific performance will be refused. *Woolford* v. *Steele*, 27 Ky. L. Rep. 88, 84 S. W. 327; *Shoop* v. *Burnside*, 78 Kan. 871, 98 Pac. 202. By statute in some jurisdictions specific performance will not be granted unless it appears that the consideration was adequate. *White* v. *Sage*, 149 Cal. 613, 87 Pac. 193. But inadequacy of consideration alone is not generally enough to justify a refusal to enforce the contract specifically. *Coles* v. *Trecothick*, 9 Ves. 234; *O'Brien* v. *Boland*, 166 Mass. 481, 44 N. E. 602. If, however, the inadequacy is so great as to shock the conscience of the court and be decisive evidence of unfair dealing, specific performance will be refused. *Clitheral* v. *Ogilvie*, 1 Desaus. Eq. (S. C.) 250. In such a case the hardship on the defendant is so great as to overcome any hardship on the plaintiff resulting from the denial of an incident of his contract, and equity is better served by leaving the purchaser to his remedy at law. See *Seymour* v. *Delancey*, 3 Cowen (N. Y.) 445, 517. How gross the inadequacy must be depends on the circumstances, but the principal case seems in accord with the trend of modern authority on this point. See *Worth* v. *Watts*, 74 N. J. Eq. 609, 611, 70 Atl. 357, 358. The court need not have based its decision entirely on this ground, however. The fact that the defendant's agent received a commission from the plaintiff without the knowledge of the defendant would seem to be sufficient evidence of collusion to justify a refusal to decree specific performance. *Fish* v. *Leser*, 69 Ill. 394; *Palmer* v. *Gould*, 144 N. Y. 671, 39 N. E. 378; *Young* v. *Hughes*, 32 N. J. Eq. 372. See 15 HARV. L. REV. 318, 741.

STATUTES — INTERPRETATION — MEANING OF "MANUFACTURING ESTABLISHMENT." — A bankrupt company imported preserved cherries, which it colored, flavored, bottled, and placed upon the market as "Maraschino cherries." Creditors who had furnished supplies claim a lien upon the bankrupt's property under a statute providing for such security where the business is a "rolling mill, foundry, or other manufacturing establishment." KY. STAT., § 2487; (U. S.) ACT, July 1, 1898, c. 541; BANKRUPTCY ACT, § 64 b (5); 30 STAT. AT LARGE, 563. *Held*, that the lien attaches. *In re I. Rheinstrom & Sons Co.*, 207 Fed. 119 (Dist. Ct., E. D. Ky.).